

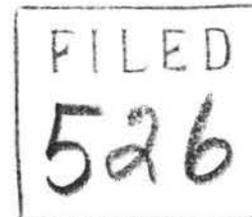
SHERIFFS:
HIGHWAY PATROL:
ARREST:
BAIL:

(1) The sheriff under Supreme Court Rule 37.485 may admit to bail a person arrested for a motor vehicle violation pursuant to the bail schedule when the courts are not open. (2) The sheriff has a duty to receive into custody persons arrested without warrant by the Highway Patrol for a motor vehicle violation.

OPINION NO. 526

December 22, 1966

Honorable Richard J. Blanck
Prosecuting Attorney of
Cooper County
Boonville, Missouri



Dear Mr. Blanck:

Your inquiry requesting an official opinion of this office concerning the authority of a sheriff to accept bail from a person arrested by a highway patrolman, when the Magistrate Court is not open and no uniform traffic ticket has been filed in the Magistrate Court and secondly, whether a person can be lawfully confined in the county jail when arrested by a patrolman without warrant is considered herein.

Your first question is answered by our Opinion No. 42, dated November 8, 1961, addressed to the Honorable Fred L. Howard. We concluded therein that under Supreme Court Rule 37.485, the sheriff of the county in which the offense was committed is authorized to set and take the amount of bail which shall not be less than \$16.00 or more than \$200.00 in accordance with the bail schedule as provided in the above Rule.

Your second question is answered in the affirmative and is based upon several statutes which are set out in pertinent parts as follows:

Section 221.020, RSMo., 1959 is as follows:

"The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible."

Honorable Richard J. Blank

Section 221.040 RSMo., 1959 is as follows:

"It shall be the duty of the sheriff and jailer to receive, from constables and other officers, all persons who shall be apprehended by such constable or other officers, for offenses against this state, or who shall be committed to such jail by any competent authority; and if any sheriff or jailer shall refuse to receive any such person or persons, he shall be adjudged guilty of a misdemeanor, and on conviction shall be fined in the discretion of the court."

Section 43.190 RSMo., 1959 is as follows:

"The members of the patrol * * * * are hereby declared to be officers of the state of Missouri. * * * * The members of the patrol shall have authority to arrest without writ, rule, order or process any person detected by him in the act of violating any law of this state."

* * * * *

Section 43.195 RSMo., 1959 Supp. is as follows:

"Any member of the Missouri state highway patrol may arrest on view, and without a warrant, any person he sees violating or whom he has reasonable grounds to believe has violated any law of this state relating to the operation of motor vehicles."

Considering the plain and ordinary meaning of the words of the statute as we are directed to do by the Supreme Court of Missouri (State v. Neill, Mo., 397 S.W.2d 666, 669), we conclude it is the duty of the sheriff to receive into custody such persons, so arrested on view without warrant, but under Section 544.170 RSMo., 1959, they may not be held without warrant for more than twenty hours. Of course, if the court is open, Section 43.210 RSMo., 1959 requires the highway patrolman to take the person arrested "forthwith * * * before the court or magistrate * * * to be dealt with according to law."

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CONCLUSION

It is the opinion of this office that:

1. Pursuant to Supreme Court Rule 37.485, when an arrest is made without a warrant for a misdemeanor involving the operation of a motor vehicle, the sheriff of the county in which the offense is committed is authorized to set and take the amount of bail when the courts are not open which shall not be less than \$16.00 or more than \$200.00 in accordance with the bail schedule.

2. The sheriff has the duty to receive into custody any prisoner arrested by a highway patrolman without a warrant for a law-violation involving the operation of a motor vehicle.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard C. Ashby.

Yours very truly,



NORMAN H. ANDERSON
Attorney General